

**REMARKS**

Claims 1-4 and 7-22 will be pending in the application. Claims 1, 3, 9, 10, 12 and 17 are amended. Support for the changes to claims 1, 9 and 10 can be found on paragraph [0130] of the instant published application No. 2004/0090955. Reconsideration of the rejected claims in view of the following remarks is respectfully requested.

***Telephone Interview***

Applicant appreciates the courtesy extended by Examiner Russell in the Telephone Interview of February 5, 2009. In the Interview, Applicant's representative explained how the prior art rejections were improper because, among other things, the Examiner was taking an overly broad interpretation of the prior art documents and the claims. The Examiner asserted that the rejections were not unreasonable.

Applicant also proposed possible amendments to the claims to place the application in condition for allowance and/or to advance prosecution. The Examiner agreed that amending the claims to recite certain proposed features such as that disclosed in the last sentence of paragraph [0130] of the instant published application No. 2004/0090955 would advance prosecution and cause the Examiner to reconsider the applied art rejections.

Applicant notes that while Applicant has amended independent claims 1, 9 and 10 as proposed in the Interview, Applicant is not conceding in this application that these claims, prior to the instant amendment, are not patentable over the art cited by the Examiner. The present claim amendments are only for facilitating expeditious prosecution of possible allowable subject matter. Applicant respectfully reserves the right to pursue these and other claims in one or more

continuations and/or divisional patent applications.

***Allowable Subject Matter***

Applicant acknowledges that claim 3 has been indicated to contain allowable subject matter. As this claim is being presented in independent form, Applicant requests that this claim be indicated to be allowed.

***35 U.S.C. § 101 Rejection***

Claims 10, 11 and 20-22 were rejected as allegedly being directed to non-statutory subject matter. Applicant submits that this rejection is moot.

While Applicant submits that claims previously satisfied the requirements of Section 101, by this Amendment, Applicant has amended claim 10 in a manner which is believed to resolve this basis of rejection.

Applicant requests that the Examiner reconsider and withdraw the above-noted rejection.

***35 U.S.C. §102 Rejection***

Claims 1, 2, 4, 7-13 and 17 were rejected under 35 U.S.C. §102(e) for being anticipated by U.S. Patent No. 7,027,449 issued to GARCIA-LUNA-ACEVES, *et al.* ("GARCIA"). This rejection is respectfully traversed.

Applicant submits that the reference applied by the Examiner does not show or suggest each and every feature of claims 1, 9 and 10 for the reasons asserted in the Interview, and for the additional reasons set forth below.

Claims 1, 9, and 10

Claim 1 recites, in pertinent part:

... determining whether or not transmission of said datagram on a link to said next hop router would result in a bandwidth usage exceeding a bandwidth threshold associated with said next hop router...and

basing a routing decision on the bandwidth usage of the link to said next hop router and on a bandwidth usage as billed by an ISP on the links to the next hop routers,

wherein the bandwidth usage is a dynamic parameter which is updated in a forwarding information database (FIB) in real-time.

Claim 9 recites, in pertinent part:

... a system determining whether or not transmission of said datagram on a link to said next hop router would result in a bandwidth usage exceeding a bandwidth threshold associated with said next hop router...

wherein the router bases a routing decision on the bandwidth usage of the link to said next hop router and on a bandwidth usage as billed by an ISP on the links to the next hop routers, and

wherein the bandwidth usage is a dynamic parameter which is updated in a forwarding information database (FIB) in real-time.

Claim 10 recites, in pertinent part:

... third program instructions to determine whether or not transmission of said datagram on a link to said next hop router would result in a bandwidth usage exceeding a bandwidth threshold associated with said next hop router...

wherein a routing decision is based on the bandwidth usage of the link to said next hop router and on a bandwidth usage as billed by an ISP on the links to the next hop routers, and

wherein the bandwidth usage is a dynamic parameter which is updated in a forwarding information database (FIB) in real-time.

The Examiner asserts that GARCIA teaches the feature of determining whether or not transmission of a datagram on a link to the next hop router would result in a bandwidth usage exceeding a bandwidth threshold associated with the next hop router at col. 15, lines 56-60.

Applicant disagrees. The noted language of GARCIA merely discusses how a source router can

select a valid path that satisfies the bandwidth requirement. This is not the same as determining whether or not transmission of the datagram on a link to the next hop router would result in a bandwidth usage exceeding a bandwidth threshold associated with said next hop router.

The Examiner points to col. 15, lines 24-37 of GARCIA as teaching that the routing decision is based on the bandwidth usage of the link to the next hop router. Applicant disagrees. The noted language merely discusses how a routing table is used to determine the next hop router. The noted, however, says nothing with regard to a routing decision being based on the bandwidth usage of the link to said next hop router.

Finally, as was pointed out in the Interview, GARCIA does not appear to disclose or suggest that the router bases a routing decision on the bandwidth usage of the link to the next hop router and on a bandwidth usage as billed by an ISP on the links to the next hop routers.

For the foregoing reasons and because this document fails to disclose the above-noted features of the instant invention, Applicant submits that this document fails to disclose each and every recited feature of claims 1, 9 and 10. Accordingly, Applicant submits that the Examiner has failed to provide an adequate evidentiary basis to support a rejection of anticipation or obviousness, and that the instant rejection is improper.

Accordingly, Applicant respectfully requests that the rejection over claims 1, 9, and 10 be withdrawn.

#### Dependent Claims

Claims 2, 4, 7, 8, 11-13 and 17 are dependent claims, depending on independent claims 1, 9, and 10. For this reason, Applicant submits that these claims are thus distinguishable based on independent claims 1, 9, and 10.

Accordingly, Applicant respectfully submits that the above-noted rejection under 35 U.S.C. § 102(e) should be withdrawn.

### ***35 U.S.C. §103 Rejections***

#### ***Over Garcia with Klinker***

Claims 14, 16, 19, 20 and 22 were rejected under 35 U.S.C. §103(a) for being unpatentable over GARCIA in view of U.S. Patent No. 7,133,365 issued to KLINKER. This rejection is respectfully traversed.

Applicant submits that the references applied by the Examiner does not show or suggest each and every feature of claims 1, 9 and 10 for the reasons noted above regarding GARCIA as well as those presented in the previous response regarding KLINKER.

Claims 14, 16, 19, 20 and 22 are dependent claims, depending on independent claims 1, 9, and 10. For this reason, Applicant submits that these claims are thus distinguishable based on independent claims 1, 9, and 10.

Accordingly, Applicant respectfully submits that the above-noted rejection under 35 U.S.C. § 103(a) should be withdrawn.

#### ***Over Garcia with Klinker and Chwastyk***

Claims 15, 18 and 21 were rejected under 35 U.S.C. §103(a) for being unpatentable over GARCIA in view of KLINKER and further in view of U.S. Patent No. 3,783,258 issued to CHWASTYK. This rejection is respectfully traversed.

Applicant submits that the references applied by the Examiner does not show or suggest each and every feature of claims 1, 9 and 10 for the reasons noted above regarding GARCIA as well as those presented in the previous response regarding KLINKER.

CHWASTYK does not cure the deficiencies of GARCIA and KLINKER. Even assuming the Examiner is correct that CHWASTYK teaches the features of these dependent claims, CHWASTYK has not been shown to teach, among other things missing from GARCIA and KLINKER, that the router bases a routing decision on the bandwidth usage of the link to said next hop router and on a bandwidth usage as billed by an ISP on the links to the next hop routers.

Claims 15, 18 and 21 are dependent claims, depending on independent claims 1, 9, and 10. For this reason, Applicant submits that these claims are thus distinguishable based on independent claims 1, 9, and 10.

Accordingly, Applicant respectfully submits that the above-noted rejection under 35 U.S.C. § 103(a) should be withdrawn.

### **CONCLUSION**

In view of the foregoing remarks, Applicant submits that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicant hereby makes a written conditional petition for extension of time, if required.

Serial No.: 10/690,015

FR920020058US1

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew M. Calderon", with a long horizontal flourish extending to the right.

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